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Counsel for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SANDY HACKETT, an individual

Plaintiff,

vs.

RICHARD FEENEY, an individual;
ARTHUR PETRIE, an individual; TRP
ENTERTAINMENT, LLC, a Nevada limited
liability company, PLAYLV GAMING
OPERATION, LLC d/b/a PLAZA HOTEL
AND CASINO, a Nevada limited liability
corporation; BROADWAY BOOKING
OFFICE NYC, LTD, a New York
corporation.

Defendants.

RICHARD FEENEY, an individual;
ARTHUR PETRIE, an individual; TRP
ENTERTAINMENT, LLC, a Nevada limited
liability company, PLAYLV GAMING
OPERATION, LLC d/b/a PLAZA HOTEL
AND CASINO, a Nevada limited liability
corporation; BROADWAY BOOKING
OFFICE NYC, LTD, a New York
corporation.

Counterclaimants.

vs.

SANDY HACKETT, an individual

Counter-Defendant.

Case No. 2:09-cv-02075-RLH-LRL

**DEFENDANTS/COUNTERCLAIMANTS'
MOTION FOR PROTECTIVE ORDER
REGARDING NON-PARTY WITNESS
SOUND TRACS, INC.**

1 Defendants/Counterclaimants Richard Feeney ("Feeney"), Arthur Petrie ("Petrie"),
 2 TRP Entertainment, LLP ("TRP"), PlayLV Gaming Operation, LLC d/b/a Plaza Hotel and
 3 Casino ("PlayLV"), and Broadway Booking Office NYC, Ltd. ("BBO") (hereinafter
 4 collectively, "Defendants"), by and through counsel, GREENBERG TRAURIG LLP, hereby
 5 move for a protective order against Plaintiff Sandy Hackett's ("Hackett" or "Plaintiff") two
 6 subpoenas served on non-party witness Sound Tracs, Inc. ("Sound Tracs"); specifically, (1)
 7 the Subpoena To Take the Deposition of Sound Tracs, Inc. (per its PMK(s)), and (2) the
 8 Subpoena For Production of Documents To Custodian of Records of Sound Tracs, Inc.
 9 Both subpoenas were served on April 20th, 2010, with document production scheduled for
 10 May 3, 2010, and the PMK deposition set for May 12, 2010.

11 This Motion For Protective Order Regarding Non-Party Witness Sound Tracs, Inc.
 12 ("Motion") is made in accordance with Federal Rule of Civil Procedure 26(c), Local Rule 26-
 13 7, and is supported by the following Memorandum of Points and Authorities together with
 14 the exhibits thereto, the papers and pleadings on file in this action, and any oral argument
 15 that this Court may allow.

16 DATED this 22nd day of June, 2010.

17 Respectfully submitted,

18 GREENBERG TRAURIG, LLP

19
20 By: /Peter H. Ajemian/

21 MARK G. TRATOS, Esq.
 22 Nevada Bar No. 1086
 23 F. CHRISTOPHER AUSTIN, Esq.
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 Counsel for Defendant

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2 **LOCAL RULE 26-7 CERTIFICATION**

3 Counsel for Defendants has conferred with counsel for Plaintiff in good faith in an
4 attempt to resolve the discovery disputes raised in this Motion without the need for Court
5 intervention and, after letter correspondence, personal consultation and a sincere effort to
6 do so, counsel have been unable to resolve the matter without court action.

7 DATED this 22nd day of June, 2010.

8 Respectfully submitted,

9 GREENBERG TRAURIG, LLP

11 By: */Peter H. Ajemian/*

12 MARK G. TRATOS, Esq.
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21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION AND BACKGROUND FACTS**

23 From the inception of this case, Plaintiff Hackett has been uncooperative in the
24 discovery process. To put it simply, throughout discovery in this case Plaintiff has received
25 thousands of pages of documents and taken key depositions of Defendants, but has
26 refused to be deposed himself or meaningfully engage in discovery. Now, Plaintiff is
27 seeking to compel additional discovery from Sound Tracs, a company that is owned and
28

1 controlled by Feeney, one of the principal Defendants in this case. While Sound Tracs is
2 technically a non-party to the instant matter, the fact that it is owned and controlled by
3 Feeney essentially gives Plaintiff another avenue to inundate Defendants with additional
4 discovery requests.

5 At the heart of the instant Motion is Plaintiff's unwillingness to cooperate in the
6 discovery process. In fact, Plaintiff has flatly refused to be deposed by Defendants'
7 counsel, effectively shutting down discovery. (See Defendants' Motion to Amend Discovery
8 Plan and Scheduling Order, p. 3 ("Motion to Amend" [Docket # 58].)) At the time the Sound
9 Tracs document production and deposition dates were set, Plaintiff had yet to produce a
10 single responsive document to Defendants' numerous production requests served on
11 Plaintiff. Even now, Plaintiff has only produced a small fraction of documents requested by
12 Defendants, compared to Defendants having produced over forty thousand (40,000)
13 responsive documents to date. As such, discovery in this case has been one-sided, and
14 Plaintiff's continual demands for additional discovery from Defendants and non-party
15 witnesses owned and controlled by Defendants, without reciprocating in the least is simply
16 unacceptable.

17 Plaintiff's refusal to be deposed and to fully engage in discovery stems from
18 Plaintiff's belief that Defense counsel is conflicted out of representing Defendants. After
19 continually threatening disqualification from the inception of this case, Plaintiff finally
20 brought his Motion to Disqualify Greenberg Traurig, LLP, and Mark Tratos on May 25, 2010
21 ("Motion to Disqualify" [Docket # 54].) This Motion to Disqualify and Defendants'
22 Opposition to Plaintiff's Motion to Disqualify Greenberg Traurig, LLP, and Mark Tratos
23 ("Opposition to Motion to Disqualify" [Docket # 67]) are currently pending before this Court;
24 however, as explained in more detail below, it is the disqualification issue that is key to
25 Defendants' instant Motion.

26 The facts regarding discovery and otherwise in this matter have been thoroughly set
27 forth in Defendants' Motion to Amend and Defendants' Motion to Compel the Deposition of
28

1 Plaintiff Sandy Hackett (“Motion to Compel” [Docket # 50].) Additionally, Plaintiff’s Motion
2 to Disqualify and Defendants’ Opposition to Motion to Disqualify have exposed Plaintiff’s
3 conduct in this matter. Defendants’ will not waste the Court’s time by reciting every detail
4 of those pending motions. However, Plaintiff cannot be allowed to continue to receive
5 discovery from Defendants and not produce anything in return. Plaintiff should have been
6 participating in discovery all along; nevertheless, if Plaintiff is waiting for the Court’s ruling
7 on the pending Motion to Disqualify before producing the requested documents and
8 appearing for his deposition, then Defendants argue that fairness dictates all discovery
9 should be stayed pending that ruling. This includes the discovery propounded on non-party
10 witness Sound Tracs, and as such, the Court should grant Defendants’ instant Motion.

11 **II. PROCEDURAL HISTORY**

12 This essence of this case is a dispute over the copyright in a live musical stage show
13 called “The Rat Pack Is Back” (the “Show”), between the current and former members of
14 the production company for the Show, TRP Entertainment, LLC (“TRP”). Plaintiff has also
15 alleged various other claims against TRP and its principals, and has subsequently engaged
16 in an aggressive third-party discovery campaign, including multiple subpoenas served on
17 non-party witnesses.

18 On April 20th, 2010, Plaintiff served non-party witness Sound Tracs with two
19 subpoenas. The subpoenas scheduled document production for May 3, 2010, and set the
20 PMK deposition for May 12, 2010. (See Notices attached hereto as Exhibit A; see also,
21 Plaintiff’s Motion For Issuance Of Order To Show Cause Re Contempt Directed To Non-
22 Party Witness Sound Tracs, Inc. Over Failure To Comply with Two Subpoenas (“Motion for
23 Contempt” [Docket # 56].)) However, for reasons discussed in more detail below, Sound
24 Tracs did not comply with the subpoenas. Plaintiff responded to this non-compliance by
25 filing its Motion for Contempt on June 3, 2010, to which Defendants filed an Opposition on
26 June 21, 2010 (“Opposition to Motion for Contempt” [Docket # 68].) - both are currently
27 pending before this Court.

1 Now, Defendants are seeking a stay on Sound Tracs' discovery production until after
 2 this Court decides the pending Motion to Disqualify. As Plaintiff and Defendants have
 3 agreed to stay all other non-party discovery in this matter based on this condition,¹
 4 Defendants are currently requesting that Sound Tracs be given the same courtesy.

5 **III. DISCUSSION**

6 Under FED. R. CIV. P. 26(c), a court may grant a protective order "for good cause...to
 7 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
 8 expense, including one or more of the following: (A) forbidding disclosure or
 9 discovery;...(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or
 10 discovery to certain matters." Here, Defendants are merely requesting that the Court grant
 11 a protective order to stay the discovery propounded on Sound Tracs until after this Court
 12 has decided the pending Motion to Disqualify. Once this Court decides the Motion to
 13 Disqualify, Sound Tracs will produce the requested relevant discovery in this matter.

14 Sound Tracs, owned and controlled by Defendant Feeney, is a non-party witness to
 15 this case that was served with two subpoenas by Plaintiff on April 20, 2010 (See Notices
 16 attached hereto as Exhibit A; see also, Motion for Contempt, Exhibit 1.) At the time Sound
 17 Tracs was served, it was not represented by Defendants' counsel; however, due to the fact
 18 that Feeney is the principal of Sound Tracs and also a principal Defendant in this case,
 19 Defendants' counsel agreed to accept service on behalf of the company as a courtesy to
 20 Plaintiff. (See id.) Notwithstanding acceptance of service, Defendants' counsel did not
 21 take on the representation of Sound Tracs at that time.

22 The reasoning behind this is quite simple - if Defendants' counsel was to be
 23 subjected to a motion to disqualify, then it did not make economic sense for principal
 24 Defendant Feeney to pay for the additional representation of Sound Tracs while the
 25 disqualification issue remained unresolved. In other words, the fact that Plaintiff had
 26 continually threatened to bring a disqualification motion against Defendants' counsel (and
 27

28 ¹ See Opposition to Motion for Contempt, Exhibit A.

1 finally made good on that threat by filing the Motion to Disqualify on May 25, 2010), put
 2 Defendant Feeney in an awkward and unfairly disadvantaged position. (See Motion to
 3 Compel; see also, Motion to Disqualify; Opposition to Motion to Disqualify.) In essence, if
 4 Feeney retained Defense counsel on behalf of Sound Tracs, any work product created in
 5 that representation could possibly be rendered useless due to the hovering disqualification
 6 issue. If Plaintiff is successful in his campaign to remove Defendants' counsel, any of the
 7 matters handled by Defendants' counsel may be "tainted" by the very issues that cause any
 8 such disqualification. This obviously would go to any representation of Sound Tracs.

9 On the other hand, Feeney should not be forced to retain separate counsel for the
 10 issue of the Sound Tracs subpoenas alone. Again, this would be an inefficient and
 11 wasteful use of Feeney's resources - having to bring new counsel up to speed on the
 12 issues in the case (which had been ongoing extensively for months by the time the Sound
 13 Tracs subpoenas were noticed) specifically for the purpose of representing Feeney's non-
 14 party company Sound Tracs in discovery matters will cause undue economic harm.
 15 Additionally, Feeney should be allowed to use Defendants' counsel, his long time counsel,
 16 to fully represent his interests in this matter. This is not an issue of trying to prevent
 17 discovery on Sound Tracs - Feeney is completely willing to respond to the discovery
 18 propounded on Sound Tracs. However, such discovery should be completed after this
 19 Court decides the Motion to Disqualify. As such, Feeney should not be penalized for
 20 making a business decision to save costs by acting to keep all aspects of the case in the
 21 hands of his current counsel; thus, this Court should grant Defendants' instant Motion.

22 The equitable course of action here is to stay all discovery relating to Sound Tracs,
 23 and all other non-party witnesses, pending the Court's decision on the Motion to Disqualify.
 24 Once the Motion to Disqualify has been decided, Feeney will know whether Defendants'
 25 counsel will continue to represent him in this case. At that point, Defendants' counsel will
 26 be able to adequately represent Feeney's interests in Sound Tracs concurrently with those
 27 of the collective Defendants. In fact, the intention of the parties regarding third party

1 discovery reflects this sentiment exactly. Through recent negotiations in light of the
 2 pending Motion to Disqualify, the parties have agreed that continuing to force Defendants'
 3 counsel to represent Defendants' interests in non-party discovery matters is
 4 counterproductive. As such, the parties have come to an agreement regarding all other
 5 third party witnesses. (See Opposition to Motion for Contempt, Exhibit A.) This agreement
 6 recognizes the inefficiency involved in Defense counsel's continued engagement in non-
 7 party discovery during the pendency of the Motion to Disqualify; therefore, the agreement
 8 effectively stays all third party discovery until the Motion to Disqualify is decided. (See id.)

9 Unfortunately, and perhaps tellingly, Plaintiff would not allow Sound Tracs to be
 10 included in this agreement. (See id.) While it does not make economic sense for Feeney
 11 to be forced to hire additional counsel to defend non-party Sound Tracs in discovery,
 12 Plaintiff is bent on financially injuring Feeney by making Sound Tracs pay. The Court
 13 should grant Defendants' Motion.

14 **IV. CONCLUSION**

15 For each and every reason identified above, Defendants respectfully request that
 16 the instant Motion be granted.

17 DATED this 22nd day of June, 2010.

18 Respectfully submitted,

19 GREENBERG TRAURIG, LLP

20 /Peter H. Ajemian/

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 22 F. Christopher Austin (Nevada Bar No. 6559)
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 25 Las Vegas, NV 89169
 26 Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 22nd, 2010, I served the foregoing
DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PROTECTIVE ORDER
REGARDING NON-PARTY WITNESS SOUND TRACS, INC. via the Court's CM/ECF filing
system to all counsel of record and parties as listed.

/Peter H. Ajemian/
An employee of GREENBERG TRAURIG, LLC

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